

**IN THE U.S. DISTRICT COURT
FOR THE DISTRICT OF DELAWARE**

APPLE INC.,

Plaintiff,

v.

MASIMO CORPORATION and
SOUND UNITED, LLC,

Defendants.

C.A. No. 1:22-cv-01377-MN

**DECLARATION OF BRIAN HORNE IN SUPPORT OF
DEFENDANTS' OPPOSITION TO PLAINTIFF'S
MOTION TO EXPEDITE TRIAL**

I, Brian Horne, declare as follows:

1. I am a partner with the law firm of Knobbe, Martens, Olson & Bear, LLP, counsel of record for Defendants Masimo Corporation and Sound United, LLC in the above-captioned matter. I have personal knowledge of the matters set forth herein and if I am called upon to testify, I could and would testify competently thereto.

2. Apple filed four petitions before the Patent Trial and Appeals Board to *inter partes* review proceedings against two patents owned by Masimo Corporation: U.S. Patent Nos. 10,912,502 and 10,945,648. The Board denied all four of Apple's petitions.

3. Attached hereto as **Exhibit 13** (Sept. 15, 2020 Apple Watch Series 6 Release) is a true and correct copy of the content available at the following link (retrieved on Nov. 17, 2022): <https://www.apple.com/newsroom/2020/09/apple-watch-series-6-delivers-breakthroughwellness-and-fitness-capabilities>.

4. Attached hereto as **Exhibit 14** (Instructions for Users) is a true and correct copy of the content available at the following link (retrieved on Nov. 17, 2022 and excerpted below (emphases added)): <https://support.apple.com/en-us/HT211027>.



How to take a blood oxygen measurement

You can take a blood oxygen measurement at any time with the Blood Oxygen app.

1. Make sure that your Apple Watch is snug but comfortable on your wrist.
2. Open the Blood Oxygen app on your Apple Watch.
3. Stay still, and make sure your wrist is flat with the Apple Watch facing up.
4. Tap Start, then keep your arm steady for 15 seconds.
5. Wait. The measurement takes 15 seconds. At the end of the measurement, you will receive the results.
6. Tap Done.

5. Attached hereto as **Exhibit 15** is a true and correct copy of C. Patz et al., *Accuracy of the Apple Watch Oxygen Saturation Measurement in Adults and Children with Congenital Heart Disease*, Pediatric Cardiology (August 22, 2022).

6. Attached hereto as **Exhibit 16** is a true and correct copy of the public version of the First Amended Complaint, *In the Matter of Certain Light-Based Physiological Measurement Devices and Components Thereof*, Inv. No. 337-TA-1276 (Jul. 7, 2021).

7. Attached hereto as **Exhibit 17** is a true and correct copy of excerpts of the public version of the Final Initial Determination On Violation Of Section 337, *In the Matter of Certain Light-Based Physiological Measurement Devices and Components Thereof*, Inv. No. 337-TA-1276 (Jan. 10, 2023).

8. Attached hereto as **Exhibit 18** is a true and correct copy of excerpts of the Joint Status Report, *Gavrieli Brands LLC v. Soto Massini (USA) Corp.*, Civil Action No. 1:18-cv-00462-MN, D.I. 28 at 13-14. (D. Del. Jun. 01, 2018).

9. Attached hereto as **Exhibit 19** is a true and correct copy of the Answer To Amended Complaint And Amended Counterclaims, *Gavrieli Brands LLC v. Soto Massini (USA) Corp.*, Civil Action No. 1:18-cv-00462-MN, D.I. 31 (D. Del. Jun. 05, 2018).

10. Attached hereto as **Exhibit 20** is a true and correct copy of U.S. Patent Publication No. 2017/0325744.

11. Attached hereto as **Exhibit 21** is a true and correct copy of excerpts of the [nonconfidential] June 6, 2022 Evidentiary Hearing Transcript, *In the Matter of Certain Light-Based Physiological Measurement Devices and Components Thereof*, Inv. No. 337-TA-1276.

12. Attached hereto as **Exhibit 22** is a true and correct copy of excerpts of the [nonconfidential] June 9, 2022 Evidentiary Hearing Transcript, *In the Matter of Certain Light-*

Based Physiological Measurement Devices and Components Thereof, Inv. No. 337-TA-1276.

13. Attached hereto as **Exhibit 23** is a true and correct copy of U.S. Patent No. 10,702,211.

14. Attached hereto as **Exhibit 24** is a true and correct copy of International Patent Publication No. 2017/165532.

15. Attached hereto as **Exhibit 25** is a true and correct copy of U.S. Patent Publication No. 2019/0196411.

16. Attached hereto as **Exhibit 26** is a true and correct copy of U.S. Patent No. 6,801,799.

17. Attached hereto as **Exhibit 27** is a true and correct copy of the public version of the Memorandum Order, *Ethicon LLC v Intuitive Surgical, Inc.*, C.A. No. 17-871-LPS-CJB, D.I. 27 (D. Del. Aug. 25, 2017).

18. Attached hereto as **Exhibit 28** is a true and correct copy of the content available at the following link (retrieved on Feb. 24, 2023):
<https://www.bestbuy.com/site/searchpage.jsp?cp=3&id=pcat17071&st=smartwatch>.

19. Attached hereto as **Exhibit 29** is a true and correct copy of the Letter from Mitchell Goldstein, M.D., to International Trade Commission, Doc ID 790986, *In the Matter of Certain*

Light-Based Physiological Measurement Devices and Components Thereof, Inv. No. 337-TA-1276.

20. Attached hereto as **Exhibit 30** is a true and correct copy of the Letter from Kevin Ward, M.D., to International Trade Commission, Doc ID 790884, *In the Matter of Certain Light-Based Physiological Measurement Devices and Components Thereof*, Inv. No. 337-TA-1276.

21. Attached hereto as **Exhibit 31** is a true and correct copy of the Letter from Michael Ramsay, M.D., to International Trade Commission, Doc ID 790980, *In the Matter of Certain Light-Based Physiological Measurement Devices and Components Thereof*, Inv. No. 337-TA-1276.

I declare under penalty of perjury under the laws of the United States of America that the foregoing is true and correct.

Executed on February 24, 2023 in Irvine, California.

/s/ Brian C. Horne

Brian C. Horne